

kind in §410.414(c), that a miner has a pulmonary or respiratory impairment, a board certified or board eligible radiologist's interpretation of a chest X-ray taken by a radiologist or qualified technician will be accepted if: (1) It is of a quality sufficient to demonstrate the presence of pneumoconiosis and; (2) it was submitted in support of a claim, unless it is established that the claim has been fraudulently represented.

(j) *Acceptance of autopsy reports.* Unless there is reason to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, an autopsy report concerning the presence of pneumoconiosis and the stage of advancement of the disease will be accepted if it is already on file.

(k) *Acceptance of affidavits-miner deceased.* Where there is no medical evidence or other relevant evidence (see §410.414(c)) to establish total disability or death due to pneumoconiosis of a deceased miner, affidavits from the spouse and other individuals having knowledge of the deceased miner's physical condition will be sufficient to establish total disability or death due to pneumoconiosis if they are already on file.

[43 FR 34781, Aug. 7, 1978, as amended at 44 FR 10058, Feb. 16, 1979]

#### §410.703 **Adjudicatory rules for determining entitlement to benefits.**

(a) *General.* Section 402(f)(2) of the Act provides that the criteria and standards to be applied to a claim reviewed under section 435 of the Act, for determining whether a miner is or was totally disabled due to pneumoconiosis or died due to pneumoconiosis, shall be no more restrictive than the criteria applicable to a claim filed with the Social Security Administration on or before June 30, 1973, under part B of title IV of the Act. In keeping with this provision, the interim evidentiary rules and disability criteria contained in §410.490 will be applicable for this review.

(b) *Payment provisions.* The DOL has sole responsibility for assigning liability for payment purposes. The DOL regulations relating to the amount of benefits payable, the manner of payment and all other provisions published

at 20 CFR part 725 shall be applicable to a claim approved under this subpart.

(c) *Date from which benefits are payable.* Benefits for claims reviewed under this subpart G for which entitlement to benefits is established under the BLBRA of 1977 are payable on a retroactive basis for a period which begins no earlier than January 1, 1974.

#### §410.704 **Review procedures.**

(a) *Notification.* Each claimant who has filed a claim for benefits under part B of title IV of the Act, and whose claim is either pending before the Social Security Administration or the courts or has been denied on or before March 1, 1978, will be mailed a notice advising that, upon the request of the claimant, the claim shall be:

(1) Reviewed by the Social Security Administration or DOL, Office of Workers' Compensation Programs to see whether entitlement to benefits may be established under the BLBRA of 1977; and

(2) If review by the Social Security Administration is requested, the review will be made on the basis of the evidence on file as of March 1, 1978; and

(3) If review by the Office of Workers' Compensation Programs is requested, the Office of Workers' Compensation Programs will provide an opportunity for additional evidence to be submitted for consideration prior to a determination.

(b) Where the claimant is mentally incompetent or physically incapable, or is a minor, review of the claim may be elected by those people described in §410.222. Where the original claimant is deceased, any person who may be entitled to benefits as a survivor of the claimant, including those described in §410.570(c), may elect review of the claim.

(c) *Effect of review of a pending part B claim under the BLBRA of 1977 on the pending claim.* Part B claims pending before the Social Security Administration or the courts will continue to be processed under the old law at the same time that these claims are being reviewed by the Social Security Administration, at the claimant's request, under the BLBRA of 1977. Claimants would then have two separate and